

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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SHERELLE MELVIN,

Index No.
Purchased:

Plaintiff(s),

VERIFIED COMPLAINT

-against-

ROBERT NAVARRO, JOHN A. LIVINGSTON,
JAVIER FERNANDEZ, MICHAEL GUADIO,
MAURICE DALESSANDRO, WESLEY FRADERA,
ALBERTO A. PUENTE, RICHARD DUGGAN
and EDWARD CANTALOUPE,

Defendant(s).
=====X

The plaintiff, SHERELLE MELVIN, by her attorneys, DINKES & SCHWITZER, P.C.,
complaining of the defendants herein, respectfully shows to this Court and alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. That the plaintiff, SHERELLE MELVIN, is a resident of the County of the Bronx, City and State of New York.
2. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, THE CITY OF NEW YORK, was a municipal corporation duly organized and existing under and by virtue of the Laws of the City and State of New York.
3. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, NEW YORK CITY POLICE DEPARTMENT, was a public agency duly constituted and existing under and by virtue of the Laws of the City and State of New York.
4. That on or about June 20, 2007, a Notice of Claim was served on the defendants, THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT, prior to the commencement of this action.

5. That on or about June 20, 2007, the plaintiff herein duly presented in writing to the defendants, THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT, the claims for damages herein set forth and upon which this action is, in part, founded and that said claim was presented for adjustment.

6. That more than 30 days have elapsed since the said Notice of Claim, dated June 19, 2007, was served upon the defendant and the defendants, THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT, has failed and refused to make payment or make an adjustment of any claims herein set forth.

7. That the plaintiff has duly complied with all of the conditions precedent to the commencement of this action as required by New York General Municipal Law §50(h).

8. That this action was commenced within one (1) year after the accrual of the causes of action herein.

9. Defendant, ROBERT NAVARRO, Tax ID# 937169 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

10. Defendant, JOHN A. LIVINGSTON, Tax ID# 936962 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

11. Defendant, JAVIER FERNANDEZ, Tax ID# 941017 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

12. Defendant, MICHAEL GUADIO, Tax ID# 925337 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct

house 044.

13. Defendant, MAURICE DALESSANDRO, Tax ID# 908319 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

14. Defendant, WESLEY FRADERA, Tax ID# 941018 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

15. Defendant, ALBERTO A. PUENTE, Tax ID# 939253 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

16. Defendant, RICHARD DUGGAN, Tax ID# 915648 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

17. Defendant, EDWARD CANTALOUPE, Tax ID# 929822 was a police officer/detective employed by the New York City Police Department and attached to the NYPD Command Precinct house 044.

18. Plaintiff sues defendant P.O. ROBERT NAVARRO, Tax ID# 937169 in both his individual and official capacity.

19. Plaintiff sues defendant P.O. JOHN A. LIVINGSTON, Tax ID# 936962 in both his individual and official capacity.

20. Plaintiff sues defendant P.O. JAVIER FERNANDEZ, Tax ID# 941017 in both his individual and official capacity.

21. Plaintiff sues defendant P.O. MICHAEL GUADIO, Tax ID# 925337 in both his

individual and official capacity.

22. Plaintiff sues defendant P.O. MAURICE DALESSANDRO, Tax ID# 937169 in both his individual and official capacity.

23. Plaintiff sues defendant P.O. WESLEY FRADERA, Tax ID# 941018 in both his individual and official capacity.

24. Plaintiff sues defendant P.O. ALBERTO A. PUENTE, Tax ID# 939253 in both his individual and official capacity.

25. Plaintiff sues defendant P.O. RICHARD DUGGAN, Tax ID# 915648 in both his individual and official capacity.

26. Plaintiff sues defendant P.O. EDWARD CANTALOUPE, Tax ID# 929822 in both his individual and official capacity.

27. That at all times material to this Complaint, the defendant, P.O. ROBERT NAVARRO, Tax ID# 937169, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

28. That at all times material to this Complaint, the defendant, P.O. JOHN A. LIVINGSTON, Tax ID# 936962, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

29. That at all times material to this Complaint, the defendant, P.O. JAVIER FERNANDEZ, Tax ID# 941017, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

30. That at all times material to this Complaint, the defendant, P.O. MICHAEL GUADIO,

Tax ID# 925337, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

31. That at all times material to this Complaint, the defendant, P.O. MAURICE DALESSANDRO, Tax ID# 908319, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

32. That at all times material to this Complaint, the defendant, P.O. WESLEY FRADERA, Tax ID# 941018 acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

33. That at all times material to this Complaint, the defendant, P.O. ALBERTO A. PUENTE, Tax ID# 939253, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

34. That at all times material to this Complaint, the defendant, P.O. RICHARD DUGGAN, Tax ID# 915648 acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

35. That at all times material to this Complaint, the defendant, P.O. EDWARD CANTALOUPE, Tax ID# 929822, acted within the scope of his duties as an employee, agent and official of the defendants, CITY OF NEW YORK and the NEW YORK CITY POLICE DEPARTMENT.

36. That at all times hereinafter mentioned, the defendants, THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT, employed various persons including the police officers, law enforcement agents and personnel mentioned in this Complaint.

37. That on or about March 24, 2007, the plaintiff, SHERELLE MELVIN, was injured by

the defendants, by their agents, servants and/or employees.

38. That the aforesaid incident was without probable cause or any justification.

39. That as a result of the defendants' negligence, the plaintiff suffered and sustained physical injury and bodily harm, plaintiff's health was impaired, plaintiff suffered severe emotional distress, plaintiff's reputation and character were injured and plaintiff suffered a loss of income.

40. That by reason of the foregoing, the plaintiff, **SHERELLE MELVIN**, has been unable to attend to her usual occupation in the manner required.

41. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules do apply to the within action.

42. That as a result of the foregoing, the plaintiff, **SHERELLE MELVIN**, sustained damages in excess of the jurisdictional amounts of the lower court.

AS AND FOR A SECOND CAUSE OF ACTION

43. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 18 inclusive, with the same force and effect as though more fully set forth at length herein.

44. That at the times of the above-stated incident and at all times hereinafter mentioned, plaintiff, **SHERELLE MELVIN**, was unlawfully assaulted and battered.

45. That at the time of said incident, assault and battery, the defendants were acting in the course and general scope of their employment duties and official duties pursuant to the authority given them by the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**.

46. That by reason of and in consequence of said assault and battery on the part of the defendants and their agents, servants and/or employees, the plaintiff, **SHERELLE MELVIN**, sustained serious bodily injuries with accompanying conscious pain and suffering and was rendered

sick, sore, lame, disabled, and bruised, and sustained severe mental distress that some of the said injuries may be permanent; that she was physically and verbally assaulted and battered at the time of her attack, and that she was unlawfully deprived of her liberty, rights and freedom.

47. That by reason of the foregoing, the plaintiff, **SHERELLE MELVIN**, has been unable to attend to her usual occupation in the manner required.

48. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules do apply to the within action.

49. That as a result of the foregoing, the plaintiff, **SHERELLE MELVIN**, sustained damages in excess of the jurisdictional amounts of the lower court.

AS AND FOR A THIRD CAUSE OF ACTION

50. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 25 inclusive, with the same force and effect as though more fully set forth at length herein.

51. That as a result of the defendants' concerted and unlawful use of excessive force and assault and battery of plaintiff, **SHERELLE MELVIN**, the plaintiff was deprived of her liberty without due process of law in violation of her rights under the Fifth and Fourteenth Amendments to the Constitution of the United States and in violation of her statutory rights under 42 U.S.C. §1983; and the plaintiff was further deprived of her right to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States and in violation of her statutory rights under 42 U.S.C. §1983 by the defendant's use of excessive physical force.

52. That the defendants' violations of plaintiff's constitutional and civil rights and concerted, unlawful use of excessive force, assault and battery of plaintiff, **SHERELLE MELVIN**, was perpetrated by the defendants pursuant to and under color of law.

53. That the aforementioned acts, omissions and conduct of the defendants, set forth above

in paragraphs 27 through 28 inclusive, resulted in the plaintiff suffering physical injury, impairment of health, severe emotional distress, impairment of reputation and character, loss of income, deprivations and violations of her Fourth, Fifth and Fourteenth Amendment rights as well as rights secured and guaranteed by 42 U.S.C. §1983 and the laws of the United States.

54. That by reason of the foregoing, the plaintiff, **SHERELLE MELVIN**, has been unable to attend to her usual occupation in the manner required.

55. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules do apply to the within action.

56. That as a result of the foregoing, the plaintiff, **SHERELLE MELVIN**, sustained damages in excess of the jurisdictional amounts of the lower court.

AS AND FOR A FOURTH CAUSE OF ACTION

57. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 32 inclusive, with the same force and effect as though more fully set forth at length herein.

58. That the defendants were negligent, reckless and failed to use reasonable care during the aforesaid incident.

59. That as a result of the negligence of the defendants, the plaintiff, **SHERELLE MELVIN**, sustained serious bodily injuries and accompanying conscious pain and suffering, and was rendered sick, sore, lame, disabled and bruised, suffered emotional distress and mental anguish and was caused to undergo medical care and treatment and incur medical expenses and other costs.

60. That by reason of the foregoing, the plaintiff, **SHERELLE MELVIN**, has been unable to attend to her usual occupation in the manner required.

61. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules do apply to the within action.

62. That as a result of the foregoing, the plaintiff, **SHERELLE MELVIN**, sustained damages in excess of the jurisdictional amounts of the lower court.

AS AND FOR A FIFTH CAUSE OF ACTION

63. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 38 inclusive, with the same force and effect as though more fully set forth at length herein.

64. That at the time of said assault, the agent, servant and/or employee was acting in the course and general scope of his employment in pursuance of the authority given him by the defendant NEW YORK CITY POLICE DEPARTMENT.

65. That upon information and belief, the defendant, NEW YORK CITY POLICE DEPARTMENT herein knew, or should have known, that the agent, servant and/or employee was unfit for the employment for which he was hired.

66. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant ROBERT NAVARRO, Tax ID# 937169, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

67. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant JOHN A. LIVINGSTON, Tax ID# 936962, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

68. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant JAVIER FERNANDEZ, Tax ID# 941017, herein created and propitiated and situation where it was

likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

69. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant MICHAEL GUADIO, Tax ID# 925337, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

70. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant MAURICE DALESSANDRO, Tax ID# 908319, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

71. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant WESLEY FRADERA, Tax ID# 941018, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

72. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant ALBERTO A. PUENTE, Tax ID# 939253, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

73. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant RICHARD DUGGAN, Tax ID# 915648, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

74. That by hiring and retaining the aforesaid agent, servant and/or employee, the defendant EDWARD CANTALOUPE, Tax ID# 929822, herein created and propitiated and situation where it was likely that said agent, servant and/or employee would, as a result of his history, character, temperament and propensity, threaten, assault and strike others.

75. That the defendant, NEW YORK CITY POLICE DEPARTMENT knew or should have known in the exercise of due and reasonable care that the aforesaid agent, servant and/or employee was vicious and potentially dangerous.

76. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant ROBERT NAVARRO, Tax ID# 937169 and supervision of the aforesaid agent, servant and/or employee.

77. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant JOHN A. LIVINGSTON, Tax ID# 936962 and supervision of the aforesaid agent, servant and/or employee.

78. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant JAVIER FERNANDEZ, Tax ID# 941017 and supervision of the aforesaid agent, servant and/or employee.

79. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant MICHAEL GUADIO, Tax ID# 925337 and supervision of the aforesaid agent, servant and/or employee.

80. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant MAURICE DALESSANDRO, Tax ID# 908319 and supervision of the aforesaid agent, servant and/or employee.

81. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant WESLEY FRADERA, Tax ID# 941018 and supervision of the aforesaid agent, servant and/or employee.

82. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant ALBERTO A. PUENTE, Tax ID# 939253 and supervision of the aforesaid agent, servant and/or employee.

83. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant RICHARD DUGGAN, Tax ID# 915648 and supervision of the aforesaid agent, servant and/or employee.

84. That the defendant, NEW YORK CITY POLICE DEPARTMENT, was negligent in the hiring of defendant EDWARD CANTALOUPE, Tax ID# 929822 and supervision of the aforesaid agent, servant and/or employee.

85. That as a result of the negligence of the defendants, the plaintiff, SHERELL MELVIN, sustained serious bodily injuries and accompanying conscious pain and suffering, and was rendered sick, sore, lame, disabled and bruised, suffered emotional distress and mental anguish and was caused to undergo medical care and treatment and incur medical expenses and other costs.

86. That by reason of the foregoing, the plaintiff, **SHERELLE MELVIN**, has been unable to attend to her usual occupation in the manner required.

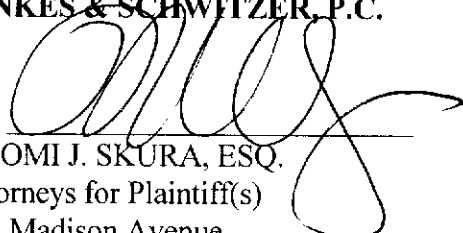
87. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules do apply to the within action.

88. That as a result of the foregoing, the plaintiff, **SHERELLE MELVIN**, sustained damages in excess of the jurisdictional amounts of the lower court.

WHEREFORE, plaintiff demands judgment against the defendants in excess of the jurisdictional amounts of the lower court.

Dated: New York, New York
March 18, 2010

DINKES & SCHWITZER, P.C.

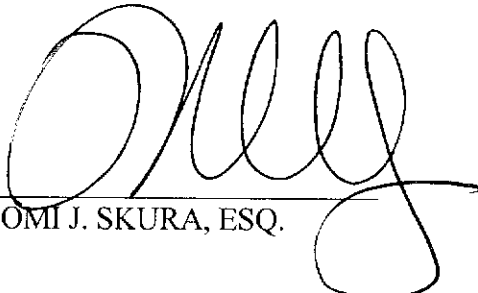
By: 

NAOMI J. SKURA, ESQ.
Attorneys for Plaintiff(s)
112 Madison Avenue
New York, N.Y. 10016
(212) 683-3800

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

I, the undersigned, an attorney admitted to practice in the courts of New York State, state under penalty of perjury that I am one of the attorneys for the plaintiff(s) in the within action; I have read the foregoing **SUMMONS AND COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe to be true. The reason this verification is made by me and not by my client(s), is that my client(s) are not presently in the County where I maintain my offices. The grounds of my belief as to all matters not stated upon my own knowledge are the materials in my file and the investigations conducted by my office.

Dated: New York, New York
March 18, 2010



NAOMI J. SKURA, ESQ.

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

SHERELL MELVIN,

Plaintiff(s),

-against-

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JAVIER FERNANDEZ, MICHAEL GUADIO,
MAURICE DALESSANDRO, WESLEY FRADERA,
ALBERTO A. PUENTE, RICHARD DUGGAN
and EDWARD CANTALOUPE,

Defendant(s).

SUMMONS AND COMPLAINT

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OUR FILE NUMBER: SMSC07-008
